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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

) GN Docket No. 93-252

Implementation of Sections 3(n)  
and 332 of the Communications Act )

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Regulatory Treatment of  
Mobile Services )

JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") hereby submits, by its attorneys, its reply comments in response to the Federal Communications Commission's (the "Commission") Further Notice of Proposed Rulemaking regarding additional modifications to the existing mobile services rules.<sup>1/</sup> The overwhelming majority of commenters, regardless of size or service category, viewed the Commission's proposal to impose a uniform 40 MHz spectrum aggregation cap on CMRS providers as contrary to the public interest. Comcast submits this reply in further opposition to the Commission's proposal, and provides comment on several issues highlighted by other commenters.

I. THE COMMISSION SHOULD NOT EXTEND THE APPLICATION  
OF THE EXISTING PCS AND CELLULAR SPECTRUM CAPS TO  
COVER ALL CMRS PROVIDERS

In the Further Notice, the Commission suggests that it may be appropriate as a precaution against the anti-competitive consequences of overzealous

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<sup>1/</sup> See Further Notice of Proposed Rule Making, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-100 (adopted April 20, 1994, released May 20, 1994)(hereafter "Further Notice").

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spectrum aggregation to establish a uniform 40 MHz spectrum cap encompassing all CMRS services.<sup>2/</sup> This uniform spectrum aggregation limit proposal was opposed by the majority of commenters.<sup>3/</sup> Comcast in particular opposed the proposal because it presumed that all CMRS providers pose similar, significant threats to mobile services competition when they hold more than 40 MHz of spectrum.<sup>4/</sup>

A. A Uniform Spectrum Cap Would Incorrectly Treat All CMRS Spectrum as a Fungible Commodity

Underlying the proposal of a uniform spectrum cap is an assumption that all CMRS providers offer fungible services on spectrum that share or will shortly share common technical and operational characteristics. These assumptions are not only wrong, they are inconsistent with the Second Report and Order in this proceeding in which the Commission recognized that all CMRS services do not directly compete.<sup>5/</sup>

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<sup>2/</sup> Further Notice, at ¶ 89.

<sup>3/</sup> See e.g., Comments of American Mobile Telecommunications Association at 28; Comments of Bellsouth Corporation and Affiliates at 6-12; Comments of Cellular Telecommunications Industry Association at 8; Comments of Century Cellunet, Inc at 1-2; Comments of GTE Service Corporation at 18; Comments of McCaw Cellular Communications, Inc. at 10-11; Comments of Motorola, Inc. at 3-4; Comments of NYNEX Corporation at 4; Comments of Ram Mobile Data USA Limited Partnership at 14; Comments of TRW, Inc. at 1.

<sup>4/</sup> See Comments of Comcast at 3-4.

<sup>5/</sup> See Second Report and Order, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1467 (1994)(hereafter "Second Report and Order").

The comments attest to the wide diversity of CMRS services offered on mobile services spectrum.<sup>6/</sup> These services cannot simply be assumed to be close substitutes. No commenter has provided the Commission with sufficient information to support this assumption. Rather, the comments demonstrate that the existing CMRS industry is diversified and that future PCS entrants will add to the level of services and carrier choices available to consumers. As noted by the commenters, a spectrum cap unduly constrains an operator's ability to respond to consumer demands for new services.<sup>7/</sup>

B.     The Different Service Area Definitions Established for CMRS  
          Make it Impossible to Rationally Implement A General  
          Spectrum Cap

Along with many other mobile service industry commenters, Comcast's comments described the extreme impracticality of placing a uniform spectrum cap over the different geographic service areas that characterize different CMRS services.<sup>8/</sup> Any general rule that limits spectrum held in one defined area, e.g. BTAs, cannot easily be translated into a comparable limit in another, e.g. RSAs.

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<sup>6/</sup> See e.g. Comments of Comcast at 3. See generally, Comments of Air Spectrum III, Inc., Comments of Airtouch Paging and ARCH Communications Group, Inc.; Comments of American Mobile Satellite Corporation; Comments of American Mobile Telecommunications Association, Inc.; Comments of American Personal Communications; Comments of American Petroleum Institute; Comments of Bell Atlantic Companies; Comments of Ericsson Corporation; Comments of Geotek Communications, Inc.; Comments of Personal Communications Industry Association; Comments of Rural Cellular Association; and Comments of the Utilities Telecommunications Council.

<sup>7/</sup> See e.g., Comments of Century Cellunet, Inc. at 3; Comments of McCaw Cellular Communications, Inc. at 10-11; Comments of Motorola, Inc. at 6.

<sup>8/</sup> See Comments of Comcast at 6; Comments of Onecomm Corporation at 8, 10.

A uniform spectrum cap would create an administrative nightmare for service providers that are licensed for CMRS services that overlap. For example, SMR providers create their service areas by calculating radial distances from a predetermined center point. The resulting self-designated service areas are dwarfed by most BTAs, even in comparison to the area covered in wide area SMR filings. A 40 MHz spectrum aggregation limit could prevent SMR operators from becoming PCS operators in the same market, except if portions of SMR spectrum are disaggregated.<sup>9/</sup>

It would be almost impossible to divest only portions of SMR spectrum in parts of markets without destroying the basic spectrum efficiency that dictated the aggregation of spectrum initially. Moreover, service providers striving to comply with a spectrum cap rule would be forced to undertake complicated and costly analyses to determine the permissible level of ownership at any given point in time in a particular portion of a service area. The Further Notice overlooks entirely the practical problems inherent in a partial "divestiture" of spectrum.<sup>10/</sup>

Similar burdens are not created by a 40 MHz PCS spectrum aggregation limit because the limit applies only to a new service with standardized MTA/BTA license areas. Thus, all PCS participants will be aware of the ground

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9/ PCS service rules do not permit operators to disaggregate PCS spectrum until certain construction benchmarks are met. See Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90-314, at ¶ 70.

10/ The comments confirm that there is no ready market for divested pieces of spectrum. FCC 94-144 (adopted June 9, 1994, released June 13, 1994).

rules in assessing their willingness to bid for PCS spectrum. In contrast, the application of a uniform CMRS spectrum aggregation limit will disrupt the current operations of CMRS providers, and force those providers to divest portions of existing spectrum holdings already in use to provide service to the public. The costs of divestiture simply cannot be compared with the costs of a decision not to participate in the auctioning of PCS spectrum in a particular market.

C. CMRS Providers Not Currently Subject to  
Spectrum Caps Do Not Pose Any Risk of  
Anticompetitive Behavior

Underlying any rational regulation is the requirement that the problem sought to be solved through regulation actually exists. In the present case, the Commission has failed to make even a preliminary showing that, in the absence of a uniform spectrum cap for all CMRS providers, the threat of anticompetitive behavior is even a remote possibility.<sup>11/</sup> PCS systems are not yet licensed, built or operating. Thus, the assumption of direct competition among CMRS providers necessitating a spectrum cap is mere speculation. Further, non-LEC CMRS providers do not have the ability to leverage "market power" to the detriment of their competitors. Despite this, the Commission proposes to treat all CMRS providers as if they each pose an equal anticompetitive threat by subjecting each to the uniform cap on spectrum

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<sup>11/</sup> See Comments of McCaw Cellular Communications, Inc. at 11; Comments of Ram Mobile Data USA Limited Partnership at 14; Comments of TRW, Inc. at 2. As several commenters observed, even if a real threat of anticompetitive behavior existed, no public benefits are served by a spectrum cap that are not already served by the federal antitrust laws. See Comments of Paging Network, Inc. at 47.

aggregation. Such regulation is, at best, grossly premature and, at worst, potentially stifling of the development of the CMRS industry, particularly as a potential competitor to LEC landline services.

D. The FCC Should Reject Arguments Favoring the Extension of PCS Spectrum Caps To SMRs

In its comments, Bell Atlantic argues strenuously against any type of CMRS-wide or overall spectrum cap.<sup>12/</sup> However, Bell Atlantic does support one type of spectrum cap: a spectrum cap which applies only to its SMR competitors.<sup>13/</sup>

The imposition of a spectrum cap would fall most heavily on wide area digital SMR that could provide an important near-term source of competition for the cellular industry. In seeking to induce the Commission to impose onerous regulatory requirements upon SMR providers, Bell Atlantic hopes to cripple the ability of SMR to provide effective competition to its own cellular operations. The Commission must not be swayed by this transparent attempt to use government regulations to help its cellular operations win a contest which should be conducted in the marketplace.

Bell Atlantic argues that parity would be advanced if SMR is subject to a spectrum cap similar to the caps applicable to cellular and PCS.<sup>14/</sup> This argument

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<sup>12/</sup> Bell Atlantic alleges that "[t]aking up a generic, CMRS-wide spectrum cap now is unwise" and that "[a]dopting an overall 'spectrum cap' now is also premature." Comments of Bell Atlantic, at 9.

<sup>13/</sup> "Although the Commission should not create a complex, overarching cap for CMRS as a whole in this proceeding, it does need to impose such limits on certain SMR providers." Comments of Bell Atlantic, at 9.

<sup>14/</sup> See Comments of Bell Atlantic at 2.

ignores that SMR spectrum has entirely different technical and operational characteristics that make the automatic application of a cap illogical. Extension of a cap will hamper the development of the SMR industry to offer effective competition to cellular carriers. The Commission has recognized and encourages these efforts as evidenced by its proposals to expand the licensing areas and the amount of spectrum available to SMR operators.<sup>15/</sup> As a result, the lack of a spectrum cap for SMR is completely consistent with the established Commission policy seeking to support the development of SMR as a viable, wide area mobile competitor. It is not inconsistent treatment for the Commission to decline to institute an SMR spectrum cap at this time.

## II. THE 1993 BUDGET ACT DOES NOT REQUIRE ABSOLUTE, ILLOGICAL PARITY

In enacting the Budget Act,<sup>16/</sup> Congress recognized that the CMRS marketplace consists of a wide range of services which cannot be classified as a single product market. In fact, recognition of the diversity of CMRS providers was incorporated into the text of the Budget Act when the Congress declared that "market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services."<sup>17/</sup> Thus, although the Budget Act does seek to

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<sup>15/</sup> See Further Notice at ¶¶ 7, 11, 15.

<sup>16/</sup> See Communications Act of 1934 (as revised by the Budget Act) § 332(c)(1)(C); H.R. Conf. Rep. No. 103-213, P.L. 103-66, 103 Cong., 1st Sess. (1993), reprinted in 1993 U.S.C.C.A.N., 1180.

<sup>17/</sup> Id.

provide for parity among providers of CMRS generally, nothing in the Act requires the identical regulation of different types of CMRS providers.

CMRS providers differ significantly in terms of technical capabilities, the nature of the services offered and the geographic areas served. As a result, to regulate all types of CMRS providers identically would be, by definition, to treat them differently since they have different features and their users different needs. Instead, the goal of regulatory parity requires that the Commission examine the particular circumstances of each type of CMRS provider and fashion regulations accordingly.

Achieving parity among different CMRS providers requires examination of the nature of the service provided, and not automatic extension of a "one size fits all" regulatory category to attain "parity." The proposals contained in the Further Notice appear to reverse the Second Report & Order's presumption that existing CMRS providers differ in substantial and significant ways. In contrast, the Further Notice would subject such different providers of CMRS service to identical regulations, which under the circumstances, would not be fair or advance true parity. A more reasonable and sustainable regulatory structure would accommodate the inherent differences between providers of different types of CMRS service. Such a result would be consistent with Congressional intent underlying the Budget Act which simultaneously calls for parity between CMRS providers but allows for differing regulatory schemes when different schemes are required by market conditions and service-specific characteristics.



### III. THE PROPOSAL TO ELIMINATE ALL INTERNAL CELL NOTIFICATIONS WOULD NOT SERVE THE PUBLIC INTEREST

In an attempt to lighten the regulatory burden with which cellular carriers must comply, the Further Notice proposes eliminating recordkeeping and listing on FCC authorizations the internal cell sites for existing licensees. While Comcast generally supports efforts to eliminate unnecessary burdens on cellular operators, the elimination of a notification requirement for all internal cells would not serve the public interest.

Under the present rules for cellular service, a carrier can operate an internal cell site close to the CGSA boundary. Such cells have the potential to interfere with an adjacent carrier's operations. Under the current regime, disputes between adjacent carriers regarding the proper boundaries for the internal cells can be resolved by examining the carrier's FCC filings which establish the engineering parameters of the disputed cell. The filing requirement also provides an effective mechanism for providing notice to adjacent market carriers regarding the locations where potential interference is most likely to occur.

The proposed elimination of all internal cell notification requirements for existing carriers does not serve the public interest because legitimately interested parties (i.e., adjacent market operators) will lose their ability to evaluate the potential for actual interference that could well exist from operation of an internal cell that is close to the CGSA boundary. As an alternative, Comcast suggests that the Commission require that information regarding the location and other particulars of

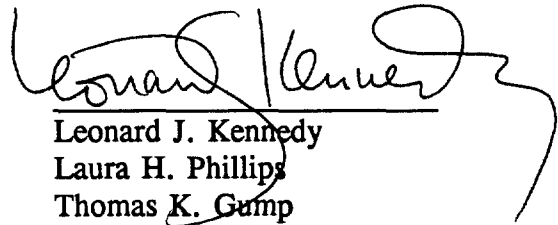
internal cells be made available to adjacent market operators upon request so that the potential to gauge interference will not be impaired.

IV. CONCLUSION

For the preceding reasons, the adoption of a uniform CMRS spectrum cap would be contrary to the public interest. Such a uniform cap would have a significant detrimental impact on the development of the CMRS industry and a disproportionate impact on wide-area SMR operators. Comcast urges the Commission to abandon its proposal to institute a uniform CMRS spectrum cap.

Respectfully submitted,

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